

SENATE BILL No. 209

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-15.5-7; IC 9-21-3.5; IC 34-28-5-5.

Synopsis: Toll road. Specifies that the failure to pay a required toll, charge, or user fee on a toll road project is a Class C infraction. Sets forth the procedures for collecting an unpaid toll when evidence of the unpaid toll is obtained by an automated traffic law enforcement system. Specifies that the laws concerning automated traffic law enforcement systems and the enforcement of infractions apply to the enforcement of the law concerning user fees on a toll road project. Provides certain defenses when the owner of the motor vehicle proves that another person was operating the motor vehicle at the time of the toll violation. Requires service charges and the amount of unpaid tolls collected as a judgment for a toll violation to be transferred to the operator of a toll road project rather than deposited into the state general fund. Provides that service charges may not exceed \$25.

Effective: July 1, 2008.

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January 8, 2008, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 209

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-15.5-7-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 9. The operator of a motor vehicle who passes**
4 **through a toll gate or other area of a toll road project where a toll,**
5 **charge, or user fee is due without paying the amount due commits**
6 **a Class C infraction.**

7 SECTION 2. IC 8-15.5-7-10 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2008]: **Sec. 10. (a) If evidence of an alleged violation of section 9**
10 **of this chapter is obtained by an automated traffic law enforcement**
11 **system, the operator of the toll road project on which the violation**
12 **allegedly occurred shall provide by mail written notice of the**
13 **alleged violation to the owner of the vehicle that is alleged to have**
14 **been used in committing the violation. Notice under this section**
15 **must include the following information:**

- 16 (1) The date, time, and place of the alleged violation.
17 (2) The nature of the evidence of the alleged violation.



(3) The amount of the toll, charge, or user fee that is due under this chapter.

(4) The amount of any service charges or other assessments added by the operator to the amount due to offset the collection costs of the operator. An amount added under this subdivision may not exceed the amount specified in subsection (d)(2).

(5) The address at which the operator accepts payments under this section.

(6) That the owner of the vehicle has thirty-five (35) days from the date the operator mails notice of the alleged violation to pay the amounts specified in the notice or to inform the operator of the owner's intent to deny the owner's responsibility for the alleged violation.

(b) If the owner of a vehicle receives notice under this section, the owner must:

(1) pay the amounts specified in the notice; or

(2) deny responsibility for the violation alleged in the notice; not later than thirty-five (35) days after the date the operator mailed the notice.

(c) If the owner of a vehicle who receives notice under this section:

(1) informs the operator that provided the notice that the owner intends to deny responsibility for the violation alleged in the notice; or

(2) fails to:

(A) pay the amounts specified in the notice; or

(B) otherwise respond to the notice;

within thirty-five (35) days of the date the operator mailed the notice, the operator may provide to the prosecuting attorney of the county in which the alleged violation occurred all evidence of the alleged violation for enforcement under IC 34-28-5.

(d) In addition to any civil penalties and costs imposed under IC 34-28-5, a judgment entered against a person who violates section 9 of this chapter must include an order to pay restitution to the operator of the toll road project on which the violation occurred, in an amount equal to the sum of:

(1) the amount of the unpaid toll, charge, or user fee; plus

(2) service or collection charges that may not exceed twenty-five dollars (\$25).

(e) Notwithstanding IC 34-28-5-5(c), the funds described in subsection (d)(1) and (d)(2) that are collected as a judgment for

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violating section 9 of this chapter shall be transferred to the operator of the toll road project on which the violation occurred. Funds transferred under this subsection must be used to help defray costs incurred to implement an automated traffic law enforcement system and to collect unpaid tolls, charges, or user fees.

SECTION 3. IC 8-15.5-7-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 11. IC 9-21-3.5 and IC 34-28-5 apply to the enforcement of this chapter.**

SECTION 4. IC 9-21-3.5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 14. (a) It is a defense in a proceeding to enforce IC 8-15.5-7-9 or section 9 of this chapter if the owner:**

- (1) proves that, at the time of the alleged violation, the owner was engaged in the business of renting or leasing motor vehicles under written agreements;
- (2) proves that, at the time of the alleged violation, the motor vehicle was in the care, custody, or control of a person (other than the owner or an employee of the owner) under a written agreement for the rental or lease of the motor vehicle for a period of not more than sixty (60) days; and
- (3) provides to the court that has jurisdiction the name and address of the person who was renting or leasing the motor vehicle at the time of the alleged violation.

(b) The owner of a motor vehicle may establish proof under subsection (a)(2) by submitting, within thirty (30) days after the owner receives notice by mail of the toll violation, a copy of the rental or lease agreement to the court that has jurisdiction.

(c) If the owner of a motor vehicle establishes the proof required under subsection (a)(2), the court that has jurisdiction shall mail a notice of the toll violation to the person identified as the person having the care, custody, or control of the motor vehicle at the time of the violation. The proof required under subsection (a)(2) creates a rebuttable presumption that the person having the care, custody, or control of the motor vehicle at the time of the violation was the driver of the motor vehicle at the time of the violation. The notice required under this subsection must contain the following:

- (1) The information described in IC 8-15.5-7-10.
- (2) A statement that the person receiving the notice was identified by the owner of the motor vehicle as the person having the care, custody, or control of the motor vehicle at the

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time of the violation.

SECTION 5. IC 9-21-3.5-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 15. (a) This section applies to an owner other than an owner described in section 14 of this chapter.**

(b) It is a defense to a proceeding to enforce IC 8-15.5-7-9 or section 9 of this chapter if the owner provides to the court that has jurisdiction the following:

(1) An affidavit signed under the penalties of perjury that:

(A) the owner; or

(B) a member of the owner's immediate family;

was not driving the motor vehicle at the time of the alleged violation.

(2) An affidavit signed under the penalties of perjury stating either of the following:

(A) The name and address of the person driving the motor vehicle or the motor vehicle drawing a vehicle at the time of the alleged violation.

(B) That:

(i) the motor vehicle; or

(ii) the license plate of the motor vehicle or the vehicle being drawn by the motor vehicle;

had been stolen before the alleged violation occurred and was not under the control or possession of the owner at the time of the alleged violation. In addition to the affidavit described in this clause, the owner must submit proof that a police report was filed concerning the stolen motor vehicle or stolen license plate.

(c) If the owner of a vehicle submits the evidence required under subsection (b)(2)(A), the court that has jurisdiction shall mail a notice of the toll violation to the person identified as the person driving the motor vehicle at the time of the violation. The evidence required under subsection (b)(2)(A) creates a rebuttable presumption that the person identified in the affidavit required under subsection (b)(2)(A) was the driver of the motor vehicle at the time of the violation. The notice required under this subsection must contain the following:

(1) The information described in IC 8-15.5-7-10.

(2) A statement that the person receiving the notice was identified by the owner of the motor vehicle as the person driving the motor vehicle at the time of the violation.

SECTION 6. IC 34-28-5-5, AS AMENDED BY P.L.40-2007,

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SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This subsection does not apply to judgments entered for violations constituting:

(1) Class D infractions; or

(2) Class C infractions for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8.

(b) If a judgment is entered:

(1) for a violation constituting:

(A) a Class D infraction; or

(B) a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8; or

(2) in favor of the defendant in any case;

the defendant is not liable for costs.

(c) Except for costs, and except as provided in IC 9-21-5-11(e) **and IC 8-15.5-7-10(e)**, the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund.

(d) A judgment may be entered against a defendant under this section or section 4 of this chapter upon a finding by the court that the defendant:

(1) violated:

(A) a statute defining an infraction; or

(B) an ordinance; or

(2) consents to entry of judgment for the plaintiff upon a pleading of nolo contendere for a moving traffic violation.

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